

REMARKS

RESPONSE

Claim Rejections – 35 USC § 103

The Examiner stated that claims 1-10, 12-16, 18, 20, 23-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcia (US 2003/0007612 hereinafter “Garcia”) in view of Shambaugh et al. (US 6,970,821, hereinafter “Shambaugh”).

The Examiner stated that claims 11, 17, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcia (US 2003/0007612 hereinafter “Garcia”) in view of Shambaugh, as applied to claim 1 above, and further in view of Rtischev et al. (US 5,634,086, hereinafter Rtischev).

Applicant respectfully disagrees and traverses independent claims 1, 23, 33, 60, 61, 62, and 63 and each and every claim depending therefrom for the reasons set forth below.

The Examiner states that “it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Garcia to include the teachings of Shambaugh of determining whether the at least one agent has adequately followed the at least one script, by dividing the voice interaction into viewable panel-level segments and comparing the panel-level segments to the automatic speech recognition analyzed voice interaction, in order to determine whether an agent is successful or not, as described in Shambaugh (col. 6, lines 5-7). The Examiner has used a very broad statement to sum up a very specific claim:

creating at least one voice record of at least one interaction processed by the at least one agent;

defining at least first data relating to evaluating compliance of the at least one agent with the at least one script; and

processing the at least one voice record against the at least first data by dividing the voice record into viewable panel-level segments and comparing the panel-level segments to an automatic speech recognition analyzed voice interaction.

However, col. 6, lines 6-7 state “A performance processor may compare sales totals among the agents and select the most successful agent.” This has *nothing* to do with claim 1 (and all other independent claims) as set forth above. There is no statement in the claim that “a performance processor may compare sales totals and select the most successful agent.” In fact, Applicant’s invention has *nothing to do with ‘selecting a successful agent’ at all*. A statement that modifications of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). “[R]ejections on obviousness cannot be sustained by *mere conclusory* statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S., 82 USPQ2d at 1396 quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is *some teaching, suggestion, or motivation to do so.* (emphasis added) *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching as a guard against using hindsight in an obviousness analysis). As set forth above, these types of statements and the type of art is throughout the application and this point could be further embellished. However, this issue has been discussed, however the issue of interpreting the claim language, and considering both the invention and the prior art as whole has not.

Moreover, the analysis by the Examiner of the claim of “evaluating the at least one voice interaction with at least one automatic speech recognition component adapted to analyze the at least one voice interaction” is faulty. The portion of Garcia that the Examiner quotes is *not related to and therefore does not obviate the claim*. The portion of Garcia states “if voice recognition software is used, a choice is entered based on *customer voice response, which must be enabled at the customer end*. Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and

the prior art as whole. MPEP §2142.02. Distilling the invention down to a gist or to a thrust of the invention disregards the “as a whole” requirement. MPEP §2142.02. *W. L. Gore & Associates, Inc. v Garlock, Inc.*, 721 F 2d 1540, 220 USPQ 303 (Fed Cir. 1983) cert. denied, 469 U.S. 851 (1984) (restricting consideration of the claims to 10% per second rate of stretching of unsintered PTFE and disregarding other limitations resulted in treating claims as though they read differently than allowed). The Examiner has misinterpreted the prior art and also distilled the invention down to a thrust or gist of the invention – *both of which are impermissible and invalidates the Examiner’s analysis*. “In determining whether the invention as a whole would have been obvious under 35 USC 103, we must first delineate the invention as a whole. In delineating the invention as a whole, we look not only to the subject matter which is literally recited in the claim in question... but also to those properties of the subject matter which are inherent in the subject matter and are disclosed in the specification. . . Just as we look to a chemical and its properties when we examine the obviousness of a composition of matter claim, *it is this invention as a whole, and not some part of it, which must be obvious under 35 USC 103.*” (Emphasis added) *In re Antonie*, 559 F.2d 618, 620, 195 USPQ 6,8 (CCPA 1977) (citations omitted) (The claimed wastewater treatment device had a tank volume to contractor area of 0.12 gal./sq. ft. The court found the invention as a whole was the ratio of 0.12 and its inherent property that the claimed devices maximized treatment capacity regardless of other variables in the devices. The prior art did not recognize that treatment capacity was a function of the tank volume to contractor ratio, and therefore the parameter optimized was not recognized in the art to be a result-effective variable.). See also *In re Papesch*, 315 F.2d 381, 391, 137 USPQ 43, 51 (CCPA 1963) (“From the standpoint of patent law, a compound and all its properties are inseparable.”). Throughout the Office Action the Examiner has, in a detailed manner, methodically separated claim elements, given some elements a particular meaning to fit the element or portion of the element to the prior art and has made different claims about the same prior art.

In conclusion, the Examiner has chosen prior art, tried to show obviousness by combining or modifying the teachings of the prior art to produce the claimed invention where

there is no teaching, suggestion, or motivation to do so and distilled the invention down to a "gist" or "thrust" of the invention disregarding the "as a whole" requirement.

However, purely in the interest of expediting the prosecution of the instant invention, Applicant has amended independent claims 1, 23, 33, 60, 61, 62, and 63 to substantially include the following limitations:

, wherein a panel-level time displacement stamp is assigned to each panel, and comparing the panel-level segments to an automatic speech recognition analyzed voice interaction, wherein a set of action rules is applied to the output of the processing to direct a quality assurance action to be taken.

In light of the arguments set forth above, Applicant traverses each and every claim, depending from claims 1, 23, 33, 60, 61, 62, and 63.

Support for such limitations, which are not taught or suggested by the cited art, can be found at least in pages 12-19 of the instant invention. As such, Applicant believes that claims 1, 23, 33, 60, 61, 62, and 63, as well as the claims that depend from them, are in condition for allowance and respectfully request they be passed to allowance.

Respectfully submitted,

Date: November 19, 2008

WEST CORPORATION



29129

PATENT & TRADEMARK OFFICE
11808 Miracle Hills Drive
Omaha, Nebraska 68154
(402) 965-7077

By: /Raffi Gostanian/
Raffi Gostanian
Reg. No. 42,595
Tel: 972.849.1310